No. 01-534

OCT 26 2001

In the

Supreme Court of the United States

OCTOBER TERM, 2001

HUGH F. O'DONNELL AND CLIENT CENTERED LEGAL SERVICES OF SOUTHWEST VIRGINIA, INC.,

Petitioners,

v.

JOHN EIDLEMAN, JOHN ERLENBORN, AND THE LEGAL SERVICES CORPORATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief for the Respondents in Opposition

Victor Fortuno
Lynn A. Bulan
Mark Freedman
LEGAL SERVICES CORP.
750 First Street, N.E.
Washington, D.C. 20002

Andrew J. Heimert
2845 29th Place, N.W.
Washington, D.C. 20008

Thomas S. Williamson, Jr.
Counsel of Record
Robert A. Long, Jr.
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Counsel for Respondents John Eidleman, John Erlenborn, and the Legal Services Corporation

October 26, 2001

QUESTION PRESENTED

Whether a former recipient of grants from the Legal Services Corporation has an implied private right of action to challenge the Corporation's decision to change the geographical boundaries of the service areas for which it provides grants.

PARTIES TO THE PROCEEDING AND RULE 29.6 LISTING

The parties to the proceeding are named in the caption. Respondent John Erlenborn, Acting President of the Legal Services Corporation, has been substituted for John McKay, former President of the Legal Services Corporation and a defendant/appellee below, pursuant to Supreme Court Rule 35.3.

Respondent the Legal Services Corporation is a federally chartered corporation that is not a publicly held corporation or entity and does not have any parent companies.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 LISTING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 3

I. The Court Of Appeals Correctly Held That Petitioners Have No Implied Private Right Of Action 4

II. The Ruling Below Is Not In Conflict With Decisions Of Other Courts Of Appeals 6

III. The LSC Decision Petitioners Have Challenged Is Correct And Is Not Before This Court 8

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Air Courier Conference of Am. v. *American Postal Workers Union*, 498 U.S. 517 (1991) 7

Alexander v. *Sandoval*, 121 S. Ct. 1511 (2001) 3, 4, 8

Cort v. *Ash*, 422 U.S. 66 (1975) 5, 6, 8

Food & Drug Administration v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) 9

Grassley v. *Legal Services Corp.*, 535 F. Supp. 818 (S.D. Iowa 1982) 5

Legal Services Corp. of Prince George's County, Md. v. *Ehrlich*, 457 F. Supp. 1058 (D. Md. 1978) 6

Merrell Dow Pharmaceuticals Inc. v. *Thompson*, 478 U.S. 804 (1986) 8

Multnomah Legal Services Workers Union v. *Legal Services Corp.*, 936 F.2d 1547 (9th Cir. 1991) 4

Regional Management Corp. v. *Legal Services Corp.*, 186 F.3d 457 (4th Cir. 1999) 3, 4, 7

San Juan Legal Services, Inc. v. *Legal Services Corp.*, 655 F.2d 434 (1st Cir. 1981) 6, 7, 8

Spokane County Legal Services v. *Legal Services Corp.*, 614 F.2d 662 (9th Cir. 1980) 4, 6, 7, 8

Texas Rural Legal Aid, Inc. v. *Legal Services Corp.*, 940 F.2d 685 (D.C. Cir. 1991) 4, 6, 8

Touche Ross & Co. v. *Redington*, 442 U.S. 560 (1979) 4

Virginia Bankshares, Inc. v. *Sandberg*, 501 U.S. 1083 (1991) 4

STATUTES, ACTS, and LEGISLATIVE MATERIALS

28 U.S.C. § 1331 7

28 U.S.C. § 1337 7

42 U.S.C. § 2996b 5

42 U.S.C. § 2996d 4
42 U.S.C. § 2996j 7
Pub. L. No. 104-134, § 501, 110 Stat. 1321 (1996) 2, 8
Pub. L. No. 104-134, § 503, 110 Stat. 1321 (1996) 1, 6, 7
Pub. L. No. 104-208, § 502, 110 Stat. 3009-59 (1996) 2
Pub. L. No. 105-119, § 502, 111 Stat. 2440 (1997) 2
Pub. L. No. 105-277, 112 Stat. 2681-107 (1998) 2
Pub. L. No. 106-113, 113 Stat. 1501-A49 (1999) 2
H.R. 7824, § 6(c)(6) (1973) 5
H.R. Rep. 93-247 (1973) 5
119 Cong. Rec. 20,704, 20,725–29 (1973) 5

REGULATIONS and REGULATORY MATERIALS

45 C.F.R. § 1634.9 (2000) 6
60 Fed. Reg. 48,951 (Sept. 21, 1995) 1
61 Fed. Reg. 14,252 (Apr. 1, 1996) 2, 8
65 Fed. Reg. 21,480 (Apr. 21, 2000) 3
65 Fed. Reg. 33,842 (May 25, 2000) 2
65 Fed. Reg. 58,570 (Sept. 29, 2000) 9

STATEMENT OF THE CASE

Respondent, the Legal Services Corporation ("LSC" or "the Corporation"), was created by Congress in 1974 for the purpose of "providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. § 2996b(a). By the terms of the Legal Services Corporation Act, 42 U.S.C. §§ 2996a–2996*l* (the "LSC Act"), LSC itself does not provide legal services. Instead, it provides grants to legal-services providers throughout the Nation which, in turn, provide legal services to eligible persons in the areas they serve. Pet. App. 5.[1]

LSC began in 1995 to explore the use of competitive bidding to award grants as a means of enhancing the efficacy and efficiency of the delivery of legal services that it funds. These efforts were motivated by LSC's recurring concern that it would be subject to funding cuts or limited by level funding, while still being expected to provide for the growing legal needs of low-income persons. That same year, in response to proposed legislation in Congress to require competitive bidding for the award of legal-services grants, LSC published in the Federal Register a proposed regulation to govern a competitive process for the award of grants. *See* 60 Fed. Reg. 48,951 (Sept. 21, 1995). The rule included an explanation that LSC would award grants in "service areas," the boundaries of which LSC would determine. *Id.* at 48,952. The proposed regulation also provided that LSC could change the boundaries of existing service areas, explaining that a service area "could include all or part of a current recipient's service area or be larger than an area served by a current recipient." *Id.*

In early 1996, Congress, as anticipated, passed appropriations legislation for LSC that required LSC to institute a system of competitive bidding to award grants. *See* Pub. L. No. 104-134, § 503(a)(1), 110 Stat. 1321 (1996); Pet. App. 5. That legislation also directed LSC to "define geographic areas" for

---

[1] Respondent John Erlenborn is the Acting President of LSC, and has been substituted for John McKay, former LSC President and a defendant/appellee below, pursuant to Supreme Court Rule 35.3. Respondent John Eidleman is a Program Counsel for LSC with responsibility for LSC grantees in Virginia.

purposes of funding. Pub. L. No. 104-134, § 501(a)(1); Pet. App. 5. Shortly thereafter, LSC promulgated as final, with some modifications, the rules governing competitive bidding that it had proposed in 1995. *See* 61 Fed. Reg. 14,252 (Apr. 1, 1996). The preamble to these rules explained that LSC would establish service-area boundaries in its "unlimited discretion." *Id.* at 14,254. In subsequent years, the appropriations acts for LSC have restated or adopted by reference the competitive-bidding provisions of the 1996 Appropriations Act. *See* Pub. L. No. 104-208, § 502(a)(1), 110 Stat. 3009-59 (1996); Pub. L. No. 105-119, § 502(a)(1), 111 Stat. 2440, 2510 (1997); Pub L. No. 105-277, 112 Stat. 2681-107 (1998); Pub. L. No. 106-113, 113 Stat. 1501-A49 (1999).

In an effort to improve the efficiency of the delivery of legal services to the poor, LSC has since undertaken a reconsideration of its service-area boundaries, which originally had been set on the basis of historical happenstance. *See* 65 Fed. Reg. 33,842, 33,845 (May 25, 2000) (noting that "the present delivery structure reflects national funding decisions made in the late 1970's"); Pet. App. 6. In many states, LSC has decided to consolidate service areas in order to improve the delivery of legal services. This consolidation has resulted in a decrease in the total number of service areas.

In 1998, LSC requested that LSC grant recipients consider additional ways to improve the delivery of legal services in their states. LSC issued Program Letters 98-1 and 98-6 in February and July 1998, respectively. Pet. App. 6. Those letters posed to LSC grant recipients a variety of questions to which LSC sought responses.

After initial discussions among Virginia grant recipients undertaken pursuant to these Program Letters, LSC requested that the grantees consider a number of the issues that they had thus far failed to address. *See* Pet. App. 6. In particular, LSC requested that grant recipients "develop a plan that has the potential of creating the optimal legal services delivery system" for Virginia. To this end, LSC requested that Virginia grant recipients consider configurations for Virginia that had between four and six service areas, instead of the then-current twelve service areas. The programs were asked to advise LSC as to the optimal configuration of service areas in Virginia to assist LSC in arriving at a decision on the new configuration. *Id.*

The grant recipients ultimately submitted to LSC a report in which the programs proposed reducing the number of service areas in Virginia from twelve to six or seven. *See* Pet. App. 6. LSC adopted the seven-area proposal for the boundaries of the service areas in Virginia, and LSC announced its decision in the Request for Proposal that it made available in April 2000 for grants for 2001. Pet. App. 6; *see* 65 Fed. Reg. 21,480 (Apr. 21, 2000) (publishing list of service areas for, *inter alia*, Virginia)

Petitioners, Client Centered Legal Services ("CCLS") and Hugh O'Donnell, filed a lawsuit challenging LSC's decision to change the service-area boundaries, alleging that the decision violated Congress's competitive-bidding statute, was *ultra vires*, and was in other respects not in accordance with law. The district court ruled that LSC was within its authority to change the service-area boundaries. Pet. App. 8. The court rejected the other claims advanced by Petitioners. *Id.* Accordingly, the court denied all relief requested by Petitioners and entered judgment on the merits for Respondents.

The court of appeals affirmed on the ground that LSC grantees have no private right of action to challenge LSC's decision to change the boundaries of service areas. Pet. App. 4. The Court of Appeals based its ruling on its prior holding in *Regional Management Corp.* v. *Legal Services Corp.*, 186 F.3d 457 (4th Cir. 1999) (Pet. App. 12), which held that a company against whom an LSC grantee lobbied—allegedly in violation of applicable regulations—had no private right of action to challenge LSC's decision not to discipline the grantee.

REASONS FOR DENYING THE WRIT

The unpublished decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Indeed, the decision below is squarely in line with this Court's holding last term in *Alexander* v. *Sandoval*, 121 S. Ct. 1511 (2001), which reaffirmed the standards this Court applies to determine whether a party has an implied private right of action. Despite the established precedent of this Court upon which the court of appeals relied in this case and in *Regional Management*, Petitioners attempt to manufacture a split in the circuits by citing to older decisions by other courts of appeals that were distinguished by the Fourth Circuit and decided before many of this Court's decisions regarding private rights of action. Moreover, Petitioners'

claims on the merits were properly rejected by the district court. Accordingly, there is no reason for this Court to grant the writ.

I. The Court Of Appeals Correctly Held That Petitioners Have No Implied Private Right Of Action

Petitioners have no private right of action to challenge LSC's decision to change the boundaries of the service areas for which it provides grants. This Court has held repeatedly that "private rights of action to enforce federal law must be created by Congress." *Alexander*, 121 S. Ct. at 1519 (citing *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 578 (1979)). Where Congress has not created such a right of action, "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Id.* at 1520 (citations omitted). Therefore, whether to imply a private right of action "must ultimately rest on congressional intent to provide a private remedy." *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U.S. 1083, 1102 (1991) (citing *Touche Ross*, 442 U.S. at 575). It is clear from both the LSC Act and its legislative history that Congress did not intend to give LSC grantees a private right of action to challenge the type of decision at issue in this case.

There is no explicit provision for judicial review in the LSC Act. Nothing in the Act directly confers upon anyone the right to challenge LSC's decisions. Indeed, LSC is expressly exempted from the provisions of the Administrative Procedure Act ("APA"). *See* 42 U.S.C. § 2996d(e)(1) (LSC is not "a department, agency, or instrumentality, of the Federal Government"); *Texas Rural Legal Aid, Inc.* v. *Legal Services Corp.*, 940 F.2d 685, 690 (D.C. Cir. 1991); *Multnomah Legal Services Workers Union* v. *Legal Services Corp.*, 936 F.2d 1547, 1556 (9th Cir. 1991) (citing *Spokane County Legal Services* v. *Legal Services Corp.*, 614 F.2d 662 (9th Cir. 1980)).[2] LSC is thus not subject to the restrictions of the APA, nor do the judicial-review provisions of the APA apply to LSC's actions. *See Regional Management*, 186 F.3d at 463 ("[W]e find no reason to suppose that Congress, while exempting [LSC] from judicial review under the APA . . . , intended to grant a right of action to parties such as [Petitioner].").

---

[2] The LSC Act contains limited exceptions to this provision that are not relevant here. *See* 42 U.S.C. § 2996d(g) (LSC subject to FOIA).

The legislative history of the LSC Act's confirms that Congress considered and rejected a private right of action that would allow suits against LSC. *See generally Grassley* v. *Legal Services Corp.*, 535 F. Supp. 818, 823 (S.D. Iowa 1982) (discussing legislative history). The bill as introduced contained a citizen-suit provision. *See* H.R. 7824, § 6(c)(6) (1973).[3] The provision was removed in committee, *see* H.R. Rep. 93-247, at 27 (1973) (minority views of Rep. Landgrebe), but efforts were made to restore the provision by amendment when the bill reached the floor. *See* 119 Cong. Rec. 20,725 (1973); *see also id.* at 20,704 (support of amendment by Rep. Rousselot). The debate on the proposed amendment reflected congressional concern that the provision would impose unacceptable costs on the Corporation. *See id.* at 20,725 (Rep. Clay) ("[I]f we keep adding similar amendments we are going to break the Corporation we are talking about."); *id.* (Rep. Meeds) ("[T]his [amendment] gives any [litigant] . . . the standing to sue this Corporation."). The amendment was rejected on a roll-call vote. *Id.* at 20,728–29.

Finally, Petitioners are not within the class of persons for whose "especial benefit" the statute was enacted. *See Cort* v. *Ash*, 422 U.S. 66, 78 (1975). Neither Petitioner CCLS, a provider of legal services, nor Petitioner O'Donnell, the Executive Director of CCLS, is an indigent person. *See* 42 U.S.C. § 2996b(a) (LSC was created to "provid[e] financial support for legal assistance . . . to persons financially unable to afford legal assistance"). Therefore, the court of appeals correctly held that no private right of action should be implied. *See* Pet. App. 4 ("Although legal services programs such as CCLS are an integral part of the process of delivering [legal] services, the programs themselves are not the beneficiaries of the Act.").[4]

---

[3] The proposed citizen-suit provision read as follows:

> Any interested person may bring an action in a Federal district court to enforce compliance with the prohibitions of or under this Act by the Corporation or any recipient or any officer or employee of the Corporation or of any recipient.

[4] Petitioners have no right to future funding from LSC. *See* Pub. L. No. 104-134, § 503(e) (precluding preferential treatment of incumbent grantees); 45 C.F.R. § 1634.9(b) (2000) (same); *see also Legal Services* (*continued . . .*)

The court of appeals, applying this Court's precedents, correctly held that Petitioners have no private right of action to challenge LSC's decision to reconfigure the boundaries of the service areas for which LSC awards grants.

II. The Ruling Below Is Not In Conflict With Decisions Of Other Courts Of Appeals

The three cases that Petitioners contend conflict with the decision of the court of appeals do not, in fact, conflict with that decision and are readily distinguishable, as explained by the court of appeals. Even if there were a conflict, moreover, it would be questionable whether decisions handed down one or two decades ago remain good law in the light of this Court's more recent decisions.

As an initial matter, none of the cases cited by Petitioners even addressed whether the plaintiff had a private right of action. Indeed, not one of these cases cites *Cort* or any other private-right-of-action case. Rather, the cited cases concluded that the court could review LSC's actions based on the presumption that "agency" actions are subject to judicial review. *See Texas Rural Legal Aid*, 940 F.2d at 697; *San Juan Legal Services, Inc.* v. *Legal Services Corp.*, 655 F.2d 434, 438 (1st Cir. 1981); *see also Spokane County Legal Services*, 614 F.2d at 667 (addressing only subject-matter jurisdiction). That presumption is not applicable, however, because of the LSC Act's express provision that LSC is not an "agency" subject to the APA. As explained in Section I, *supra*, the court of appeals correctly analyzed the question by inquiring as to whether Congress had created a cause of action against LSC, not whether it had exempted LSC from the APA (which is not disputed). None of the cases Petitioners cite appears to have considered the argument that the plaintiff had no private right of action; as a result, none of those decisions conflicts directly with the holding of the court of appeals.[5]

(. . . *continued*)
Corp. of Prince George's County, Md. v. *Ehrlich*, 457 F. Supp. 1058, 1064 (D. Md. 1978) (no right to funding).

[5] The existence of a private right of action is not jurisdictional. *See Air Courier Conference of Am.* v. *American Postal Workers Union*, 498 (*continued* . . .)

The cases cited by Petitioners are also readily distinguishable from this one. Two of the cases cited—*San Juan Legal Services* and *Spokane County Legal Services*—arose under a different part of the LSC Act that contains a procedural limitation on the early termination of LSC funding to a grantee. *See* 42 U.S.C. § 2996j(2) ("financial assistance . . . shall not be terminated" without a hearing by an "independent hearing examiner"). In *San Juan Legal Services*, the court held that it was appropriate to conclude that Congress had assumed "judicial review would be available to a grantee who claimed that it was denied such a hearing." 655 F.2d at 439. Similarly, in *Spokane County Legal Services* a court held that it had jurisdiction to consider the alleged procedural shortcomings of the hearing provided to a grantee that had been defunded. 614 F.2d at 665.

Because these cases were premised upon a cause of action arising from hearing rights, the court of appeals correctly distinguished them. Pet. App. 4 n.* (citing *Regional Management*, 186 F.3d at 464). No hearing is required, and no procedural rights are provided in the statute or regulations regarding LSC's service-area boundary decisions. *See Regional Management*, 186 F.3d at 464 (noting that defunding cases involved challenges to LSC actions that are to be taken pursuant to APA-like requirements). In fact, the competitive-bidding statute expressly provides that the restrictions on defunding in Section 2996j do not apply. Pub. L. No. 104-134, § 503(f).[6] This makes clear that LSC's service-area-boundary decisions do not come within the possible applicability of the earlier cases.

Texas Rural Legal Aid is also distinguishable, because it involved a challenge to an LSC regulation that placed direct limits on the expenditures of LSC funds by grantees. *See* 940 F.2d at 687. Here, in contrast, LSC's decision to reconfigure service-area boundaries did not place any direct limitations on grantee

---

(. . . *continued*)
U.S. 517, 523 n.3 (1991). Accordingly, these courts cannot be deemed implicitly to have considered the question.

[6] Petitioners did not invoke *any* specific statute in their complaint, alleging only that the court's jurisdiction arose under the federal-question statute, 28 U.S.C. § 1331, and commerce-and-trade statute, 28 U.S.C. § 1337.

expenditures or otherwise regulate their conduct. Instead, LSC altered the boundaries of the areas for which it would award grants in an effort to improve the delivery of legal services to low-income persons. In so doing, LSC did not alter any rights of grantees.

Moreover, two of the cases relied on by Petitioners were decided in the early 1980s, and the third was decided in the early 1990s, before this Court's decisions limiting the availability of implied private rights of action. This Court continued to apply *Cort* until at least five years after *San Juan Legal Services* and *Spokane County Legal Services*. *See, e.g., Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U.S. 804, 810–11 (1986). Under *Cort*, the hearing rights provided by the LSC Act were for the benefit of the defunded grantee, and thus might implicitly create a private right of action. Similarly, *Texas Rural Legal Aid* was decided before this Court's most recent decisions regarding private rights of action, which have further narrowed *Cort*. *See, e.g., Alexander, supra*. This Court's intervening jurisprudence has called into question the continuing validity of the decisions cited by Petitioners, which have not been reaffirmed by the courts of appeals that issued them.

III. The LSC Decision Petitioners Have Challenged Is Correct And Is Not Before This Court

Petitioners also contend that LSC's decision to reconfigure service areas failed to adhere to the statutory requirement that LSC award grants through a system of competitive bidding. The court of appeals did not reach this issue, on which there is no circuit conflict. Moreover, the district court correctly held that LSC's decision created competition and was lawful, rational, and supported by evidence.

The relevant legislation expressly directs LSC to "define geographic areas" for purposes of funding. Pub. L. No. 104-134, § 501(a)(1). The preamble to the grant competition regulations published in the Federal Register explained that a "'service area' . . . could include all or part of a current recipient's service area *or be larger than an area served by a current recipient*." 61 Fed. Reg. at 14,254 (emphasis added). It is thus clear that LSC has broad authority to enlarge the boundaries of service areas "to respond to a

reduced budget and to make grants to applicants who submit creative solutions to such fiscal realities." *Id.*[7]

LSC's decision to consolidate service areas in Virginia has had the salutary effect of creating competition. Prior to the grant competition for 2001, the Petitioner, CCLS, never faced competition for its service area during the era of competitive bidding; and there had been no competition for the grants in other service areas in Virginia. Grant year 2001 was the first year in which two applicants applied for a single grant in a Virginia service area—the new service area created by the consolidation of areas in southwestern Virginia, including the area served by CCLS. *See* 65 Fed. Reg. 58,570, 58,574 (Sept. 29, 2000) (noting two applicants for grant for VA-15, the southwest Virginia service area).

The district court correctly held that LSC's decision to create seven service areas in Virginia was rational and supported by evidence. *See* Pet. App. 8. As LSC explained at trial, the consolidation of service areas can enhance program effectiveness and efficiency. LSC also presented other evidence of the benefits that consolidation of service areas brings.

---

[7] Petitioners' reliance upon *Food & Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), is misplaced. That decision addressed the claimed authority of the Food and Drug Administration ("FDA") to regulate tobacco products. This Court held that because Congress has long legislated based upon the FDA's acceptance of the proposition that it lacked the authority to regulate cigarettes, Congress' intent not to delegate that authority to FDA was clear, and the FDA could not infer its authority from an ambiguous statute. *Id.* at 156. Here, Congress explicitly directed LSC to implement a system of competitive bidding and define service areas, and clearly delegated the necessary authority to LSC. Congress has ratified this authority by passing annual appropriations acts for LSC with awareness of the competitive-bidding regulations, which include the authority to change service-area boundaries.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* should be denied.

Respectfully submitted,

Victor Fortuno
Lynn A. Bulan
Mark Freedman
LEGAL SERVICES CORP.
750 First Street, N.E.
Washington, D.C. 20002

Andrew J. Heimert
2845 29th Place, N.W.
Washington, D.C. 20008

Thomas S. Williamson, Jr.
Counsel of Record
Robert A. Long, Jr.
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Counsel for Respondents John Eidleman, John Erlenborn, and the Legal Services Corporation

October 26, 2001

CONCLUSION

If Defendants' Petition for a Writ of Certiorari is granted, this conditional Cross-Petition should likewise be granted.

Respectfully submitted,

William Smith Dixon
Counsel of Record
Charles Kipps Purcell
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103
505-765-5900

Counsel for Cross-Petitioners

Of Counsel:

Michael L. Stout
215 West Sixth Street
Roswell, New Mexico 88201
505-624-1471

September 2001